

AZOME UTAH MINING CO.

IBLA 83-999

Decided April 25, 1985

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring mining claims null and void ab initio. UMC 161725 through UMC 161796.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land --Oil  
Shale: Withdrawals--Withdrawals and Reservations: Effect of

Mining claims located on land previously withdrawn from mineral entry by Exec. Order No. 5327 and Public Land Order No. 4522 are properly declared null and void ab initio.

APPEARANCES: Steven F. Alder, Esq., Salt Lake City, Utah, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Azome Utah Mining Company has appealed from a decision dated August 24, 1983, of the Utah State Office, Bureau of Land Management (BLM), declaring its lode and placer mining claims UMC 161725 through UMC 161796 null and void ab initio.

These claims were located in September and October 1971, in T. 16 and 17 S., R. 1 W., Salt Lake Meridian, Juab and San Pete Counties, Utah. BLM declared the claims null and void ab initio because they were "located entirely on lands segregated from mining location by Executive Order 5327 and Public Land Order 4522."

In Exec. Order No. 5327, dated April 15, 1930, the President temporarily withdrew, subject to valid existing rights, lands containing deposits of oil shale "from lease or other disposal." The order further provided that the withdrawal would "continue in full force and effect unless and until revoked by the President or by act of Congress." Id. In Public Land Order No. (PLO) 4522, dated September 13, 1968, the Secretary withdrew in part, subject to valid existing rights, certain lands containing deposits of oil shale "from appropriation under the United States mining laws, relating to metalliferous minerals." 33 FR 14349 (Sept. 24, 1968).

In his statement of reasons, appellant contends that the withdrawals were without notice, not in good faith, arbitrary, temporary, and have by now expired by their own terms.

[1] Exec. Order No. 5327 was issued pursuant to the Act of June 25, 1910 (Pickett Act), as amended, 43 U.S.C. §§ 141-142 (1982). Section 2 of the Act (43 U.S.C. § 142), provides in relevant part that "[a]ll lands withdrawn under the provisions of this section and section 141 of this title shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals." However, Exec. Order No. 5327 did withdraw the land from "disposal," which included disposal under the mining laws pursuant to 30 U.S.C. § 22 (1982). 1/ Langdon H. Larwill, 54 I.D. 190 (1933). Moreover, PLO 4522 completed the withdrawal with respect to locations of mining claims by precluding appropriation of metalliferous minerals in certain areas. Thus, subsequent to January 27, 1967, the effective date of PLO 4522, land described in that PLO was closed to all mineral entry. Mineral Life Corp., 81 IBLA 103 (1984); Charles H. Phillips, 78 IBLA 320 (1984); Kelly B. Hall, 4 IBLA 329 (1972).

It is well established that a mining claim located on land which is not open to such location confers no rights on the locator and is properly declared null and void ab initio. John L. Grassmeier, 77 IBLA 156 (1983); B. W. Copeland, 75 IBLA 87 (1983), and cases cited therein.

The land covered by appellant's mining claims is specifically included in PLO 4522 (see 33 FR 14351 (Sept. 24, (1960))). Therefore, by virtue of Exec. Order No. 5327 and PLO 4522, the subject land was withdrawn from all mineral entry on the date appellant located its mining claims. BLM properly declared the claims null and void ab initio. Mineral Life Corp., *supra*.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Wm. Philip Horton

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Chief Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge

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Franklin D. Arness  
Administrative Judge.

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1/ Despite the fact that Exec. Order No. 5327 is worded as a temporary withdrawal, it was expressly made subject to termination only upon revocation "by the President or by act of Congress." Accordingly, in the absence of either action, the order has continuing vitality. *Mecham v. Udall*, 369 F.2d 1 (10th Cir. 1966).

